1950. File No. S.DWR 1/1950

Legal Department

Examined

A BRANCH

Subject:— Suits Dharwar

Civil Suit No. 33 of 1948

Nimbanna Hanmappa Mudenagikar and others } Plff

Vs

The Collector of Dharwar and two others } Defts

S Dharwar 1/1950

File No.

C O N T E N T S.

Legal Department File No. S.Dwr. 1/50.

Sr.No.	R.I./O.No.	Subject	Pages.
		Suits Dharwar.	
		C.S.No. 33 of 1948	
		N. H. Mudenajkar and others	
		V/S pltfs	
		The Collector of Dwr. and two others	
		Defts.	
		For a declaration that the order is illegal and for possession of the suit land on the ground that the pltfs are entitled to perform Vatikar's Service	
			1-32

Translation of the plaint
in L.C.Suit No.33 of 1948

In the Court of the Civil Judge,
Senior Division, Hubli.

Plaintiffs :- 1. Nimbanna) Father Hanmantappa Mudenaikar
2. Mallappa) aged 15 and 16 respectively,
both minors by their next friend mother -
Basawannewa kom Hanmantappa Mudenaikar,
age 43, caste Kurbar, occupation -
agriculturist of Shiggauv, Taluka Shiggauv.
3. Baswannewwa kom Hanmantappa Mudenaikar -
age 40, caste Kurbar, occupation agriculturist
of Shiggauv, Talula Shiggauv.

Vs.

Defendants :-1. The Collector of Dharwar, District Dharwar.
2. Hanmantappa Shivappa Bajentri, age 55,
caste Korwar, occupation valikarki, of -
Shiggauv.
3. Abdulsab Vallad Ibrahimsab Savanur, age 60,
caste Muslim, occupation agriculturist of -
Shiggauv.

In this the plffs state as follows :-

1. R.S.No.	A.G.	Assessment	Judi.
148	16-7	33-9-0	3-9

Shetsanadi service land situated in Shiggauv - village, Taluka Shiggauv. This land is in possession of - the plff/s from since a very long time. It is their - ancestral property. The plffs' ~~service~~ family members have rendered Shetsanadi service since a very long time.

2. Hanmantappa the deceased father of plffs Nos. 1 and 2 and the husband of plff No.3, had rendered shetsanadi service of Valikarki of Shiggauv village for more than 20 years and was in possession and enjoyment of the suit property on that account. This was followed in the plffs family since a long time.

3. The deceased Hanmantappa , went mad and lost his sense of understanding, while he was rendering - Valikarki service to the village. Plff No.1 was very young at that time. Deft 2 having suppressed the true facts - about plff being the legal heir to the deceased, the - valikarki and the property which ought to have come to the plffs family have gone to deft 2.

4. While Hanmantappa was insane, the village - officers in collusion with deft 2 got a relinquishment deed (Rajinama) produced by him (Hanmantappa) before the Prant Officer Shiggauv Division, who held a summary inquiry and cancelled the right of service of valikarki of the plffs' family and granted it to deft 2 . The order - passed by the Prant Officer is illegal and against law. - Since the right of Valikarki service was vested in the plff's family, the Prant Officer had no authority to - grant the right of service and the lands appertaining to it to deft 2, who is a parai (not belonging to the plffs family). Hanmantappa died 5 years back. Even if he were disqualified to hold Shet sanadi lands, it was a personal disqualification and the right of service and the lands cannot go out of the family, as plff No.2 is ready and willing to ~~ex~~ continue the same on behalf of minor - plffs Nos. 1 and 2. She is ready to offer valikari - service by giving a substitute till the minor sons - attain majority. As against this the Government has no - right to dispossess the plffs of the said property and hand over the same to deft 2. The land is shetsanadi watan

Judi land even today, It must continue in the plff's family only.

6. This suit is filed to declare theorder of - the Prant Officer to be illegal and void for possession of the suit properties.

7. Deft 2 is not in any way connected with the - plff's family. Deft 3's name appears in the Record of - Rights as tenant of the land. Hence he is made a party. His tenancy is not admitted by the plffs. The name of def No.3 has been entered in collusion with deft 2.

8. L.C.192 of 1945 was filed against deft 2 by the plff but as Government was not a party to the suit and as the court decided on the preliminary point that it was a necessary party, that suit was withdrawn for technical defect with permission to bring a fresh suit.

9. After withdrawing the suit, notice under Section 80 C.P.C. has been given to the Collector of - Dharwar who has acknowledged the receipt of the same.

10. This suit has no bar of limitation.

11. Cause of action arose in August 1943 when defendant 2 was asked to give up valikarki sewrvice.

12. The cause of action and plffs and defts are residing in the jurisdiction of this court. Hence this court has jurisdiction to try this suit.

13. Plaint is valued for court fees on - Rs.551-11-6 and for jurisdiction and pleader s fees it has been valued on Rs.3000/-.

14. (a) For the above mentioned reasons -

the court should declare that the plffs are entitled to the valikarki lands and the service and hand over possession of the suit lands.

(b) Future mesne profits till possession should be granted to plffs.

(c) Court costs should be awarded

(d) Permission should be granted to amend the plaint whenever found necessary.

16-2-1948.

Sd/- P.I.Hiremath.
Pleader.

Translated by BKKallad
SGP
10-12-1948

. . .

L.C.Suit No.33 of 1948.

In the court of the Civil Judge,
Senior Division, Hubli.

Plaintiffs:-1.Nimbanna } Hanmappa Mudenayakar, aged 15
2.Mallappa } and 16 respectively, minors by
their next friend mother -
Baswannevva kom Hanmantappa Mudenaikar, -
age 43, caste Kurbar, occupation agriculturist,
of Shiggauv.

3. Baswannewa kom Hanmantappa Mudenaikar, age 43,
caste Kurubar, occupation Agriculturist of -
Shiggauv.

Vs.

Defendants:-1. The Collector of Dharwar District Dharwar.

2. Hanmantappa Shivappa Bajentri, age 55,
caste Korwar, occupation valikarki of -
Shiggauv.

3. Abdulsab Vallad Ibrahimsab Savanur, age 60,
caste Mohamadan, occupation agriculturist
of Shiggauv.

In this the W.S. of the defendant 1 is as follows :-

1. The contents of para 1 to 14 of the plaint are false, and not admitted by this deft.

2. The suit is not tenable in law. It is barred by Section 4 and 11 of the Revenue Jurisdiction Act and - Watan Act.

3. The suit is barred by limitation.

4. The notice given by plffs under Section 80 C.P.C. is not legal and proper and the contents are not admitted by this deft.

5. The suit property was not the ancestral property of the plffs and it was not in their possession since a very long time. It was assigned to the deceased father of the plffs Nos. 1 and 2 for rendering setsanadi serfice to the village community of Shiggauv. It was to continue as long as he rendered service.

6. Hanmantappa, the deceased father of the plffs Nos. 1 and 2 was never mad. He was not mentally affected at all. The allegations in para 3 of the plaint are false.

7. He resigned voluntarily in 1932. The resignation was accepted by the Assistant Collector on 19-9-1932. It was not arranged by village Officers in collusion with deft 2 as alleged in the plaint. He tendered his resignation because he did not want to render service wither by himself or through a deputy.

8. The order of the Assistant Collector in resuming and restoring the suit land to deft 2, who was duly appoibted by him, was perfeftly valid and legal. Deft 2 is in possession of the suit land since the order of the Assistant Collector i.e. from 27-10-1932, for more than 12 years.

9. The deceased father of the plffs 1 and 2 applied in 1939 to reinstate him and restore the land to him. But after a careful and through inquiry the Assistant Collector II Division, Dharwar, decided against him on 9-9-1939. The Matter was not further agitated by him till his death in 1943.

10. Deft 1 is not properly described in the

suit . The suit cannot lie against the Collector.

11. A suit of this nature for possession of the suit land is not tenable in law. The plffs ought to - have brought a suit for declaration that the order of the Assistant Collector was invalid , ultravires , and that it should be set aside.

12. As long as the order of the Assistant - Collector II Division, Dharwar is not set aside, the plffs cannot claim possession of the suit lands.

Hence the suit should be dismissed with costs.

Hubli.
-12-1948

I. B.R.Mathad, Sub-Government pleader, Hubli, do hereby declare that the contents in paras 1 to 12 of the W.S. are true to the best my knowledge and - information and I believe the same to be true.

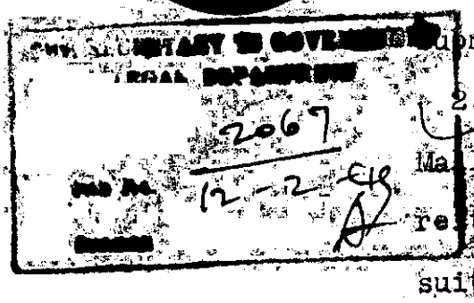
Hubli.
-12-1948

B.R.Mathad
S.G.P.

Below Collector of Dharwar's letter No.L.A.W. 486 dated 3-1-1949

9

No. L.S.T. 407
Via Belgaum, January 30, 1949



omitted:

2. This is a suit filed by Messrs. Nimbanna and Mallappa father Hanmantappa Mudinayakar of Shiggaon for restoration of setsanadi land S.No. 148 and cost of the suit together with mesne profits and for a declaration that they are entitled to the valikarki service of Shiggaon village.

The facts of the case in brief are as under.

Mr. Hanmant Nimbanna Mudinayakar, the father of the present plaintiffs, tendered his resignation of the valikarki service in 1932 which was accepted by the Assistant Collector, II Division Dharwar, on 19-9-1932. Hanmant Yogappa-Defendant No.2- was appointed as sanadi in his place as there was none in the plaintiff's family fit and willing to accept the sanadi post. The suit land S.No.148 which is assigned for sanadi service was therefore resumed and restored to the newly appointed sanadi-Hanmant on 27-10-1932 on condition that he paid an annual kasar judi of Rs. 3-9-0. Since then Defendant No.2 is in possession of the suit land and is rendering valikarki service. Hanmant Nimbanna-the original sanadi (plaintiffs father applied on 6-8-1939 to the Assistant Collector for reinstating him to the shet-sanadi post. The Assistant Collector refused his request on 4-9-1939 and no appeal was preferred against his order. Against that order of the Assistant Collector the plaintiffs have now filed the present suit.

The plaintiffs contend that the deceased Hanmantappa went mad and lost his sense of understanding while he was rendering valikarki service. The village officers therefore in collusion with defendant no.2 obtained resignation from Hanmantappa to the valikarki service and got it sanctioned

in the name of defendant no.2. This order of the Assistant Collector transferring the right of service to the defendant no.2 is illegal in view of the fact that it should have been continued in the family of the deceased sanadi Hanmantappa. They further contend that as plaintiff no.3 is ready and willing to render the service on behalf of the minors(viz., plaintiff nos. 1 and 2) by appointing a substitute till the minor sons attain majority the land must continue in the plaintiffs' family. The land in question is assigned for the sanadi service

The question as regards the position of the shet sanadis has been examined by Government from time to time and Government have come to the conclusion that the position of Government with regard to shet sanadis generally is that they are not wandars, their office is not hereditary and the lands held by them as remuneration for the services are not watan property falling under the Bombay Hereditary Offices Act,1874. If any shet sanadi ceases to perform or is considered unfit or incapable of performing service, a new shet sanadi is appointed and the service lands can be resumed from the former and granted to the latter for his remuneration.

In view of this, the order of the Assistant Collector resuming and restoring the land to the officiating sanadi cannot be regarded illegal.

The plaintiffs also contend that the present suit is not time barred as the suit filed in 1945 was withdrawn for technical defects(as Government was not made a party) with permission to bring a fresh suit. But under section 14 of the Indian Limitation Act, even if the suit is withdrawn with permission to bring another suit and a fresh suit is instituted, the plaintiffs are bound by the law of limitation in the same manner as if the suit had not been instituted. The suit is therefore time barred under section 14 of the IndianLimitation Act

13

as also under section 4(a) and section 11 of Revenue Jurisdiction act as stated by the Sub-Government Pleader.

The Commissioner considers that the suit brought by the plaintiffs should be defended. Sanction may be accorded to defend the suit.

The papers of the case accompany.

Commissioner, S.D.

Remembrancer of Legal Affairs

Hubli (Dist. Dharwar.)

Suit No. 94 of 1947.

The suit relates to Shet Sanadi land which was resumed. It is filed in the Civil Court at Hubli. The defence of the suit may be sanctioned on the lines of th appended brief.

As there are similar suits pending in the Civil Courts at Dharwar and Belgaum, and as their nature is complex, the District Government Pleader, Dharwar may be directed under the proviso to Rule 46(2) of the L.O. Rule to conduct this suit. It will not be advisable to leave it in charge of the Sub-Government Pleader.

RECEIVED IN REVENUE DEPARTMENT
on 11.3.49 M

3893
16-3-49

504
2-1949-

In the Court of the Civil Judge, Senior Division, Hubli.

Civil Suit No. 33 of 1948.

17

1. Nimbanna Hanmappa Mudenayakar.
2. Mallappa Hanmappa.
3. Baswannewa~kom Nenmantappa Mudenaikar.) Plaintiffs.

Vs.

1. The Collector of Dharwar.
2. Hanmantappa Shivappa Bajentri.
3. Abdulsab Wallad Ibrahimsab Savanur.) Defendants.

The following is the written statement of defendant No. 1 (Collector of Dharwar) in this suit :-

1. The suit is not maintainable against the present defendant No. 1. The defendant No. 1 is a public officer who is not liable to be sued in his official capacity. Moreover, this defendant has not passed any order against the plaintiff and therefore the plaintiffs have no cause of action against defendant No. 1. The suit againhst him should therefore be summarily dismissed.

2. Without prejudice, the defendant submits that the court's jurisdiction to entertain this suit is barred under section 4(a) of the Bombay Revenue Jurisdiction Act, 1876.

3. The suit is time-barred. The orders resuming the suit land and appointing defendant No. 2 as shet sanadi were passed in 1932 on the ~~resignation~~ resignation of the plaintiff's father. The application of the plaintiff's father for reinstatement was rejected on 9th September 1939. Admittedly he was then of sound mind. He died in 1943 without filing any suit within one year of the order rejecting his application for reinstatement. The suit thus became time-barred even in the life time of the plaintiff's father and consequently no cause of action arose after his death.

4. The suit is also barred under section 11 of the Revenue

Jurisdiction Act, 1876.

5. It is not admitted that the plaintiff's father was of unsound mind when he tendered his resignation. Assuming without admitting that he was of unsound mind at that date, he was admittedly restored to normal health when he applied for reinstatement.

6. The Assistant Collector's orders of 1932 were lawful and intra vires under Rule 4 of the Resumption Rules of 1908 The plaintiffs allegations to the contrary in the plaint are not correct and hence denied.

7. The plaintiffs are not entitled to any relief.

8. All allegations in the plaint which are not specifically admitted are hereby denied.

9. It is therefore submitted that the suit fails and must be dismissed with costs.

Subordinate Government Pleader, Hubli.

I, Subordinate Government Pleader, Hubli, do hereby declare that what is stated in paragraphs 1 to 9 above is true according to the information received and believed to be true. This verification is made at on the day of 1949

Subordinate Government Pleader, Hubli.

No. 925 dated 28 Oct '49, 19 49
Office of the Dist Govt Pleader,
Dharwar.

To

The Remembrancer of Legal Affairs,
Bombay.

Subject :- Long Cause C.S.No.33 of 1948 on the file of the Civil Judge, Sn. Dn., Hubli.

R.L.A.'s Memo No.3012 dated 17-3-49.
Collector Dharwar's No.Law-486.

A.

Sir,

By you Memo No.3012 dated 17-3-1949 you were pleased to ask me to conduct L.C.Suit No.33/48 in the Court of the Civil Judge, Senior Division, Hubli. The case was taken up ~~today~~ on 15-10-49 for preliminary hearing on certain points of law.

After arguments proceeded for some time, the learned pleader for the plaintiff put in an application for withdrawl of the suit. The ground was that the suit is filed against the Collector of Dharwar as defendant No.1, while it ought to have been filed against the Province of Bombay. As the plaintiffs are minors the learned Judge was disposed to grant the application.

1856
1-11-49

I have however put in my objections that the withdarwal may not be allowed, that permission to file a fresh suit may not be grabted and that in any case, costs of two pleaders viz., the District Govt Pleader and the Sub Govt Pleader, Hubli may please be allowed.

The Court was however pleased to ~~order~~ allow a withdrawal with a liberty to file a fresh suit. ~~Below~~ Attached is the ~~is the~~ copy of the Court's order dated 15-10-49.

Uncertified copy of the order and of the decree will be forwarded in due course.

Yours faithfully,
Dist Govt Pleader.

60 Legal dept

Please see overleaf a letter from the A.G.P. Orissa stating that Government has allowed the plaintiff to withdraw civil Suit No. 33 of 1968 with liberty to file a fresh suit.

These ppr may now be filed for the time being.

9/11

Remark may be recorded when the decree has been received

P.A. 9/11

Subtd:

This Suit has been ~~without~~ withdrawn with liberty to file a fresh Suit. There is no necessity of recording the result of the Suit.

This may be filed in S. Dwr/49 (new).

9/11

Result may be recorded when press copies of the brief are received. Brief has been sent to the Press (see p. S. 2)

S.A.

9/11

2/61

Heard pleaders.

I find the record is defective and so I grant permission to withdraw the suit with liberty to file a fresh suit. The applicant to pay costs of defendants including defendant 2's costs in the L.C.No.192/1945 The payment of these costs is a condition precedent to the filing of the fresh suit.

Dated 15-10-1949.

Sd/- Bhoj,

Civil Judge, Senior Division,
Hubli.

One Ten Annas Court stamp is affixed.

L.C.Suit No.33 of 1948.

Ex.42.

In the Court of the Civil Judge, Senior Division,

At Hubli.

Plaintiff :- 1. Nimbanna } Hanamantappa.
2. Mallappa }

Vs.

Defendant :- Collector of Dharwar, and etc.

In this the pleader for the plaintiff begs to apply respectfully as under :-

2. In the above suit there is a technical flaw. Instead of addressing the Provincial Government at the time of issuing requisite notice to the Government only Collector of Dharwar has been addressed. As it has been found that necessary notice must be addressed to Provincial Government before we proceedded with the suit and necessary documents regarding the original order of resumption are not yet secured inspite of diligent efforts being made by the guardian of the minor plaintiffs. I request your honour to kindly allow me to withdraw the suit with a permission to bring a fresh suit on the same cause of action. At the same time, it is prayed that no order as to costs be passed for the costs of the other side.

Sd/- P.I.Hiremath,

15-10-1949. Pleader.

The objections of the District Government Pleader are as follows :-

The withdrawal may not be allowed. That the notice was given to the Collector and that the suit was filed against the Collector and not against the Provincial Government is a patent mistake and deliberate act.

At any rate, permission to file a fresh suit may not be granted as it is not a mere formal defect.

In any case full cosrs of the suit may please be awarded for deft.1. Under the special directions from the R.L.A. the District Government Pleader had to come from Dharwar in addition to the Sub Government Pleader who has also worked in the case from the beginning. The costs of the two pleaders may please be allowed as the "nature of the suit is comples" (as observed by the RLA)

15-10-49. Sd/- S.S.Malimath,
Dist. Govt. pleader.

The objections on behalf ofnthe deft.No.2 are as under :-

That in suit No.192/45 which was withdrawn by the plaintiff, costs of this defendant have been awarded. But the Court did not make the payment of costs a condition precedent with the esult that the plaintiff againx filed this suit without payment of costs. This defendant has been in possession of land by order of the Collector. Hence it is submitted that the Court may please make the payment of costs of this suit and suit No.192/45 a conditx precedent to the filing of any such suit on the decond cause of action. And as the matter is complicated full costs and not 1/4th be allowed.

15-11-1949. Sd/- P.M.Hublikar,
Pleader.

Heard pleaders. I find the suit is defective and so I grant permission to withdraw the suit with liberty to file a fresh suit. The applicant to pay costs of the defendants including defendant 2's costs in the L.C.S.No. 192/45. The payment of these costs is a condition precedent to the filing of the fresh suit.

15-10-1949. Sd/- S.M.Bhoj,
Civil Judge, S.D.

వాయిదా నం. 33
కవ

Presented on 16th
February 2018
Sd/- BM Chandrashekar
Clerk to the Court.

వాదిపక్ష తరపున హాజరైన సాక్షులు

(1) సంజీవ్ } తండ్రి కనకయ్యంతక్కి చుట్టూ ఉండేవాళ్ళు
(2) చంద్రశేఖర్ } మరియు ఇరుగు పొరుగు వారు
పనిచేస్తున్నట్లు తమ కనకయ్యంతక్కి
చూసుకోవడం నా దగ్గరే ఉండేది.

ప్రతివాది

(1) ప్రతివాదిగారు నమోదు చేయబడిన తేదీ
ప్రకారం నోటీసు ఇచ్చినప్పటికీ ఈ రోజు
వరకు హాజరు కాలేదు. తేదీ 11-10-18

(2) ప్రతివాదిపక్ష న్యాయవాది నోటీసు స్వీకరించి
వకాలత్ దాఖలు చేయలేదు.

Examined and particulars ordered
to be entered in the Register of suits
16-12-18. Sd/- BM Chandrashekar
Clerk to the Court

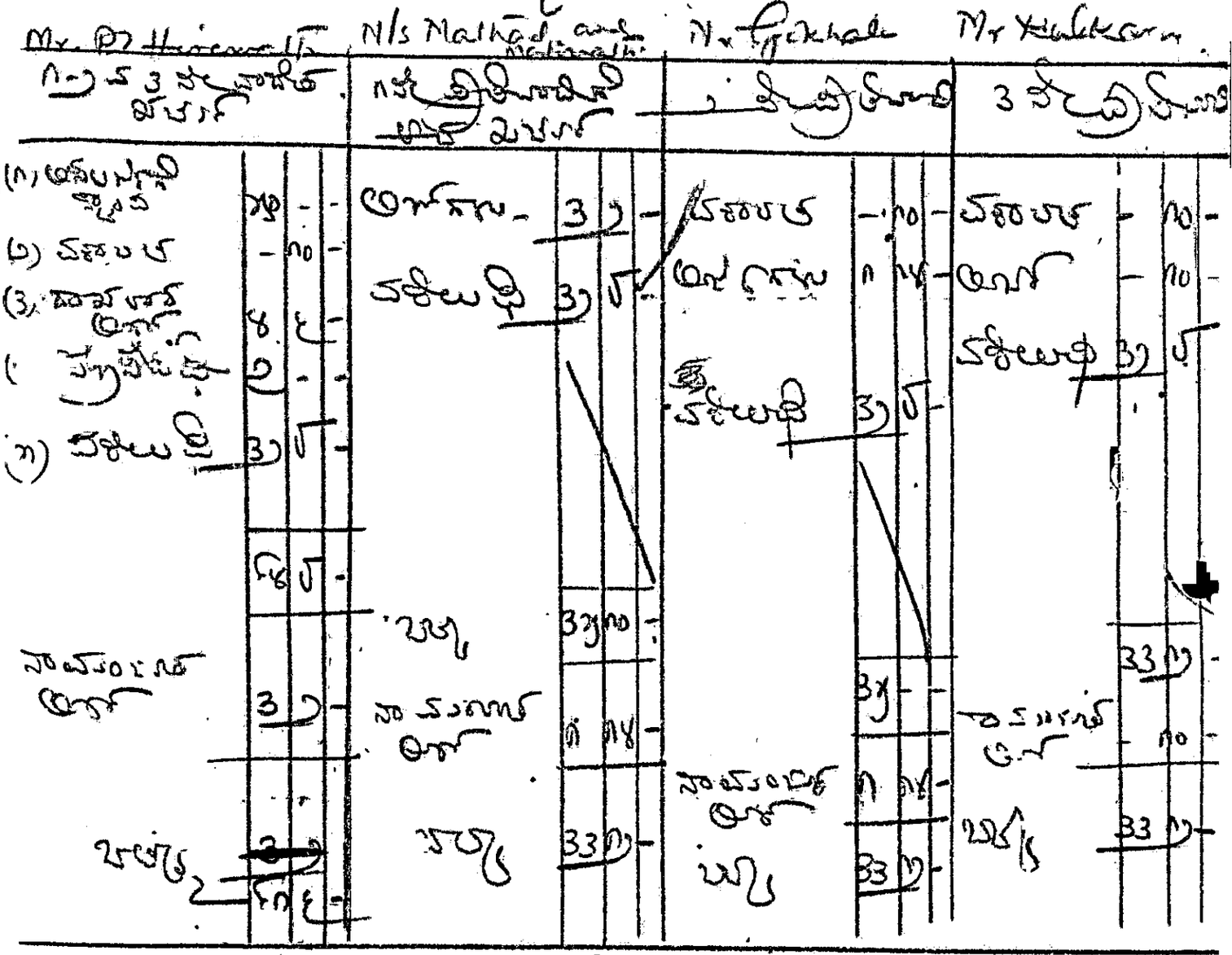
ఆర్డరు

Issue summons to defendants
for settlement of issues. Sd/- ఆర్.వి
12-7-18

Defendant No 1 duly served is
absent Exparte Sd/- మీరు
గ్రహీత

Defendant 1 & 2 not effected
through duly served Ex parte 16-10-18 Sd/-

Bill of Costs



(Seal)

Self- S M Bhat
Asst Engr. Gr I
3-11-14

True Copy

27

Suits.

Hubli (District Dharwar).

For a declaration that the order of the Assistant Collector No W.T. P.S.Q. 417, dated 27th October 1932, ordering resumption of S. No. 148 of Shiggaon and restoring it to defendant No. 2 is illegal and for possession of the suit land on the ground that the plaintiffs are entitled to perform Valikar's Service.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 4446.

Bombay Castle, 22nd April 1949.

Letter from the Collector of Dharwar No. L. A. W. 486, dated the 3rd January 1949,—Forwarding papers in the suit noted in the margin and requesting sanction to its defence.

IN THE COURT OF THE CIVIL JUDGE (SENIOR DIVISION), HUBLI.

Civil Suit No. 33 of 1948.

Nimbanna Hanmappa Mudenaikar and others... Plaintiffs.

versus

The Collector of Dharwar and two others Defendants.

Endorsement by the Commissioner, Southern Division, No. L. S. T. 407, dated the 30th January 1949.—Forwarding the above with his concurrence.

R Leg H 10—1

Memorandum to the District Government Pleader, Dharwar, No. 3012, dated the 17th March 1949.—Forwarding a copy of the brief with its accompaniments in advance.

RESOLUTION.—Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order of the Governor of Bombay,

P. M. LAD,
Secretary to Government.

original

G. R. No. 4446, L. D., dated the 22nd April 1949.

To

* The Revenue Department,
* The Commissioner, Southern Division,
* The Collector of Dharwar,
The District Government Pleader, Dharwar (with two copies of the brief).

* With a copy of the brief.

No. of 1949.

Copy forwarded for information and guidance to

Issued on 28/12/49

29 — 55

33

HUBLI (DISTRICT DHARWAR) CIVIL SUIT No. OF 1948.

Chronological Statement of Facts.

The suit is for a declaration that the order of the Assistant Collector, Dharwar, No. W.T.P.S.Q. 417, dated 27th October, 1932, ordering resumption of S. No. 148 of Shiggaon and restoring it to defendant No. 2 is illegal and for possession of the suit land on the ground that the plaintiffs are entitled to perform the Valikar's service.

2. The suit land is a Shet Sanadi land assigned for the remuneration of the service of the Village Valikar. In 1932, Hanmantappa Nimbanna the father of the plaintiffs who was performing the Valikari service resigned. The Assistant Collector accepted his resignation and by his order dated 19th September 1932, appointed in his place the defendant No. 2 as the Shet Sanadi in view of the fact that there was no one else fit and willing to accept the post in the family of the Sanadi who had resigned. The Sanadi land was thereafter resumed and restored to defendant No. 2 the newly appointed Sanadi on condition that he should pay an annual Kasar Judi of Rs. 3-9-0.

3. On 6th August 1939, the plaintiff's father submitted an application to the Assistant Collector for his reinstatement stating that he has tendered his resignation during a period of unsoundness of mind. After the considering the Mamlatdar's report the Assistant Collector refused his request.

4. The plaintiff's father died in 1943. The plaintiffs then filed suit No. 192 of 1945 against defendants Nos. 2 and 3. Government was not a party to that suit. Is was therefore withdrawn with permission to file a fresh suit and accordingly the present suit was filed on 26th August 1948, after a notice was given on 16th April 1947.

Grounds of Defence.

1. *Jurisdiction.*—The attention of the District Government Pleader is invited to paragraph 1 of the grounds of defence in the brief in Dharwar Civil Suit No. 94 of 1947 the defence of which has been sanctioned under G.R, L.D., No. 8961 of 3rd September 1947. As stated therein it should be contended that the suit is barred under section 4 (*a*) of the Bombay Revenue Jurisdiction Act, 1876.

2. *Limitation.*—The cause of action alleged by the plaintiffs in paragraph 11 of the plaint is imaginary. The orders resuming the suit land and appointing defendant No. 2 were passed in 1932 on the resignation of the plaintiff's father. Assuming without admitting that he was not of sound mind when he tendered his resignation, he was, on his own admission in his application for reinstatement, completely restored to normal health when he made that application. After full consideration the Assistant Collector rejected his application on 9th September 1939. He died four years later in 1943 and yet during that period he neither appealed nor filed any suit against the Assistant Collector's order. It was open to him to file a suit against that order within a period of one year under Article 14 of the Indian Limitation Act. The suit

thus became time-barred in the life time of the plaintiff's father and consequently no fresh cause of action accrued to the plaintiffs after their father's death. The suit is also barred under section 11 of the Revenue Jurisdiction Act in as much as the plaintiff's father did not appeal to the Higher Revenue Authorities against the Assistant Collector's order of 1939.

3. The Assistant Collector's orders of 1932 are lawful under Rule 4 of the Resumption Rules accompanying Government Notification No. 10336 dated 12th October 1908. (Phadnis Watan Act pp. 248-249). These Rules are enacted by Government in exercise of powers under Bombay Act XI of 1852 Schedule B— sections 8 and 10 and Bombay Act VII of 1863 section 2 (iii) and other powers. Rule 4 provides that service lands not falling under Rules 2 and 3 shall be continued subject to the provisions of Bombay Act III of 1874 and of any other law for the time being in force relating thereto. The proviso to that Rule enacts *inter alia* that if the Collector is at any time satisfied that the service in respect of which such lands are held is no longer performed,.....or, in the Case of service lands to which the provisions of Bombay Act, III of 1874 do not apply if it shall appear that,.....such lands or any part thereof or any of the profits thereof have or has by succession or otherwise come into the possession of female or of any person other than the person who for the time being is duly authorised to perform and does actually the service in respect of which such lands are held, the Collector may in his discretion direct the resumption of such lands or part thereof and continuance of the rest subject to such conditions as he may deem fit to impose. The Collector's power to resume therefore arises when (1) the service in respect of which the lands are held is no longer performed or (2) in cases not falling under Bombay Act III of 1874 the lands have passed into the possession of a female or a person other than the person who lawfully performs service. In the present case the plaintiff's father having tendered his resignation in 1932, service was no longer performed. The Collector had therefore a discretion to resume the land.

4. The second condition applies in cases not falling under Bombay Act III of 1874. The Office and the holdings of the Shet Sanadis are not governed by that Act. In this connection the District Government Pleader is requested to follow the arguments advanced in paragraph 4 of Dharwar Civil Suit No. 94 of 1947 referred to above. The minor plaintiff's could not have been born in 1932 when plaintiff's father resigned and their mother being a female was under Rule 4 incapable of holding Sanadi Lands. The order of resumption is therefore valid under Rule 4.

5. The allegations that the plaintiff's father was of unsound mind when he resigned should be denied. At all events he was of sound mind in 1939 when his application for reinstatement was rejected and yet he took no legal steps to regain possession of the land.

6. It should therefore be contended that the suit fails and must be dismissed with costs. It should also be pointed out that suit does not lie against the Collector of Dharwar in his official capacity.

Suits: 31

Hubli(District Dharwar).

For a declaration that the order of the Assistant Collector No.W.T.P.S.Q.417, dated 27th Octob 1932, ordering resumption of S.No. 148 of Shiggaon and restoring it t defendant No.2 is illegal and for possession of the suit land on the ground that plaintiffs are entitled to perform Valkar's Service.

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 160
Bombay Castle, 5th Jan 1950.

Read Government Resolution, Legal Department, No.4446 dated the 22nd April 1949.

Letter from the District Government Pleader, Dharwar, No.925, dated the 28th October 1949, stating that the suit noted in the margin was allowed to be withdrawn by the Civil Judge, Senior Division, Hubli, on 15th October 1949, with liberty to file a fresh suit and the following order was passed :-

In the Court of the Civil Judge (Senior Division), Hubli. Civil Suit No.33 of 1948 Nimbanna Hanmappa Mudenaikar and others. .....Plaintiffs. Vs. The Collector of Dharwar and two others. ..Defendants.	:

> I find the record is defective and so I grant permission to withdraw the suit with liberty to file a fresh suit. The applicant to pay costs of the defendants including defendant 2's costs in the L.C.S. No.192/1945. The payment of these costs is a condition precedent to the filing of the fresh suit"

Letter from the District Government Pleader, Dharwar, No.1122, dated the 14th December 1949, forwarding un certified copies of the order and decree .

RESOLUTION:- The result of the suit is recorded.

By order of the Governor of Bombay,

Issued on original [illegible] for signature

R.M.Mehta.
Assistant Secretary to Government.

p.t.p

To

The Revenue Department,
The Commissioner, Southern Division,
The Collector of Dharwar.

30.U.12.

Rubd after issue
file in S. Dharwar/50

7/1

7/1